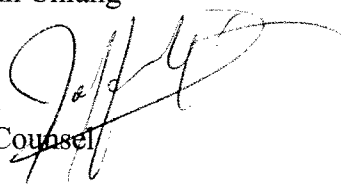


**M e m o r a n d u m**

To: Honorable Betty T. Yee, Chairwoman  
Honorable Judy Chu, Vice-Chair  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: June 7, 2007

From: Jefferson Vest  
Acting Chief Counsel



Subject: **Petition for Amendment of Property Tax Rule 462.060**  
***Change in Ownership – Life Estates and Estates for Years***  
**June 19, 2007 Board Meeting – Chief Counsel Matters – Item J – Rulemaking**

On June 6, 2007, the Board received Mr. Stephen Bennett's third petition, pursuant to Government Code section 11340.6, to amend Property Tax Rule<sup>1</sup> 462.060, *Change in Ownership - Life Estates and Estates for Years*. In this third petition, Mr. Bennett seeks to amend Rule 462.060 so that the creation or termination of a life estate gives rise to only a rebuttable presumption that a change in ownership has occurred. This matter is scheduled for the Board's consideration at the June 19, 2007 meeting<sup>2</sup> on the Chief Counsel Matters Agenda. On June 19, the Board may: (1) deny the petition; (2) grant the petition in part or in whole and commence the official rulemaking process by ordering publication of the notice pursuant to Government Code section 11346.5; or (3) direct staff to commence an interested parties process to consider the requested amendment in part or in whole. Staff recommends that Board deny the petition because the current version of Rule 462.060 is consistent with Revenue and Taxation Code sections 60 and 62, subdivision (e), as well as recent appellate court decisions.

This memorandum will set forth: (1) a general background of change in ownership law regarding life estates; (2) a discussion of the petition and the requested amendment; and (3) a discussion of the staff's recommendation.

**I. General Background of Rule 462.060, Subdivision (a)**

This memorandum references and incorporates herein the background information set forth in memoranda issued on April 13, 2007 and May 17, 2007 in response to Mr. Bennett's first and second petitions, respectively, to amend Rule 462.060.

<sup>1</sup> All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

<sup>2</sup> Under Government Code section 11340.7, the Board has 30 days from receipt to deny the petition in whole or in part, indicating the reasons why, or to initiate the rulemaking process. Petitioner has refused to waive that deadline.

## **II. Discussion of Petition**

The petition requests that the Board amend Rule 462.060, as shown below in strike-out and underlined text:

(a) Life estates. The creation of a life estate or similar beneficial interest in real property is presumed to be a change in ownership at the time of transfer unless the instrument creating the life estate or similar beneficial interest reserves such estate or similar beneficial interest in the transferor or the transferor's spouse. However the subsequent transfer of such a life estate or similar beneficial interest by the transferor or the transferor's spouse to a third party is presumed to be a change in ownership. Upon termination of such a reserved life estate or similar beneficial interest, the vesting of a right of possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is presumed to be a change in ownership. The presumption that a reassessable change in ownership occurs upon the creation or termination of a life estate or similar beneficial interest in real property may be rebutted by factors indicating one or more of the conditions set forth in Revenue Taxation Section 60 are not be [sic] satisfied. Those factors include, but are not limited to, the following:

- (1) The transferee beneficiary's name is not added as a legal title holder at the time the life estate or similar beneficial interest in real property is created.
- (2) The transferee beneficiary cannot under the terms of the instrument lawfully compel the legal title holder to add the transferee's name to the title
- (3) The transferee beneficiary does not, or cannot, make a claim to the county or the county assessor that he or she owns a legally verified interest in the real property located in that county, holds a security interest in that property, or is otherwise in possession of that property (see Revenue Taxation Code Section 610).
- (4) The instrument creating the life estate or similar beneficial interest in real property does not provide the transferee beneficiary the legal right to sell, develop, lease, or occupy the real property.
- (5) The instrument creating the life estate or similar beneficial interest in real property does not provide the transferee beneficiary the legal right to share, directly or indirectly, in the proceeds from the sale of any portion of the property.
- (6) Under the terms of the instrument creating the life estate or similar beneficial interest in real property the transferee beneficiary is bound by a no contest clause (see Probate Code Section 21300).

- (7) The instrument creating the life estate or similar beneficial interest in real property does not provide the transferee legal ownership of the real property under Article 1 of the California Civil Code.
- (8) Immediately after the life estate or similar beneficial interest in real property is created the ownership interest of at least one remainderman in that property remains substantially unchanged in value from what it was before the life estate was created.
- (9) Immediately after the life estate or similar beneficial interest in real property is created, at least one other present beneficial interest in that same property continues to be held by another party and which remains substantially unchanged in value from what it was before the life estate was created.
- (10) Immediately before the life estate or similar beneficial interest in real property is transferred the transferee beneficiary already held a present beneficial interest in the property, and he or she continues to hold that interest after the transfer.
- (11) The value of the transferee beneficiary's present beneficial use of real property computed immediately after the date of transfer under actuarial principles based on the age and life expectancy of the transferee beneficiary is not substantially equal to the value of the fee interest of that real property.

(b) Definitions. For purposes of this rule the following definitions apply:

- (1) "Similar beneficial interest in real property" includes, but is not limited to, a beneficiary's interest in real property held by a trustee under the terms of a trust instrument that cannot be revoked or modified, in whole or in part, by the beneficiary.
- (2) "Real property" means the appraisal unit that persons commonly buy and sell in the marketplace (Revenue and Taxation Code Section 51(d)) and includes land, minerals, timber, and improvements (see Revenue Taxation Code Section 104 and Civil Code Section 658).
- (3) "Transferee beneficiary" means the person who obtains a present beneficial interest in real property that under the terms of the instrument will completely terminate upon the transferee's death.
- (4) "Remainderman" means a person who holds an irrevocable future interest, either vested or contingent, in the real property (See Probate Code Section 24).

(b)(c) Estate for years. The creation of an estate for years for a term of 35 years or more is a change in ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse. However the subsequent transfer of such an estate for years by the transferor or the transferor's spouse to a third party is a change in ownership upon the termination of a reserved estate for years for any term the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is not a change in ownership.

Thus, Mr. Bennett proposes to establish that the transfer of a life estate (to other than the transferor or the transferor's spouse) gives rise to only a rebuttable presumption that a change in ownership occurs.

In his petition, Mr. Bennett states that the proposed rule:

[P]reserves for assessors their administrative right to presume that the creation or termination of a life estate or similar beneficial interest in real property constitutes a reassessable change in ownership at the time of transfer.

As explained in staff's April 13, 2007 and May 17, 2007 memoranda (both incorporated by reference herein), the "Report of the Task Force on Property Tax Administration" (Task Force Report), recommended, and the Legislature decided, that the transfer of a life estate is a change in ownership unless reserved for the transferor or the transferor's spouse. Thus, section 60 and section 62, subdivision (e) do not grant assessors the discretion to merely *rebuttably presume* that the creation or termination of a life estate not reserved in the transferor or the transferor's spouse is a change in ownership. Those sections *require* the finding that a change in ownership occurs upon the creation or termination of a life estate not reserved in the transferor or the transferor's spouse.

While section 60 codifies the Task Force Report's general definition of change in ownership, the Task Force Report and the Legislature, by enacting section 62, subdivision (e), determined that the transfer of a life estate, not reserved in the transferor or the transferor's spouse, meets the statutory definition of change in ownership as set forth in section 60, regardless of the individual circumstances of the transaction. (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480.)

### **III. Staff's Recommendation**

Staff recommends that the Board deny the petition because the current version of Rule 462.060 conforms both to the applicable statutes and recent published appellate court decisions. In staff's opinion, the requested regulatory change to state that the creation or termination of a life estate will give rise only to a rebuttable presumption of a change in ownership is contrary to well-settled law. As discussed above, the Board's rule is consistent with the legislative intent indicated by the Task Force Report. Thus, it is staff's opinion that Revenue and Taxation Code

sections 60 and 62, subdivision (e), clearly contemplate the change in ownership treatment of life estates reflected in the Board's existing rule.

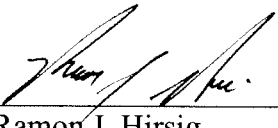
Furthermore, it is staff's opinion that, absent legislative change or an appellate court holding otherwise, the proposed amendment to Rule 462.060 is beyond the scope of the exclusion authorized by the Legislature in subdivision (e) of section 62. Therefore, staff recommends that the petition be denied.

#### **IV. CONCLUSION**

To summarize, staff recommends that the Board deny the petition to amend Rule 462.060. It is staff's opinion that Rule 462.060 conforms to the applicable statutory provisions and published appellate court decisions. Lastly, it is staff's opinion that the amendment requested in the petition would require new legislation.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved: \_\_\_\_\_

  
Ramon J. Hirsig  
Executive Director

JV:RM;jh

Prop/Rules/Rule 462.060/

Chief Counsel/Final/Life Estate Petition 6.19.07.Mtg

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